



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2013

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2013-11552

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 492315.

The Texas Health and Human Services Commission (the "commission") received a request for the investigation, final disposition, affidavit, and interview pertaining to a specified investigation involving the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the requested information may be the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-06264 (2013). We understand the law, facts, and circumstances on which the previous ruling was based have not changed. Therefore, to the extent the information at issue is identical to the information ruled on in the previous ruling, we conclude the commission must rely on Open Records Letter No. 2013-06264 as previous determinations and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the information at issue was not previously ruled upon, we will address the submitted arguments against disclosure.

Next, you contend the submitted information is subject to Open Records Letter Nos. 2004-8876 (2004) and 2004-8357 (2004). These previous determinations permitted the commission to withhold certain information compiled and maintained by the commission's Office of Inspector General (the "OIG") under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code, without requesting a decision from this office. However, as you acknowledge, in 2011 the Texas legislature amended section 531.1021(g). *See* Act of May 20, 2011, 82nd Leg., R.S., S.B. 688, § 4 (codified as section 531.1021(g) of the Government Code). Therefore, the law on which Open Records Letter Nos. 2004-8876 and 2004-8357 were based has changed and the commission may not rely on either of these rulings as previous determinations. *See* ORD 673 (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, we will address your argument against disclosure of the submitted information.

Next, we must address the commission's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You inform us the commission received the request on April 15, 2013. Accordingly, the commission's fifteen-business-day deadline was May 6, 2013. However, you did not submit arguments stating the reason why the stated exception applies or a copy or representative sample of the responsive information until May 7, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the commission failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990,

no writ); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, including section 531.1021 of the Government Code, which provides in relevant part:

(g) All information and materials subpoenaed or compiled by the [OIG] in connection with an audit or investigation or by the office of the attorney general in connection with a Medicaid fraud investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or the attorney general or their employees or agents involved in the audit or investigation conducted by the office or the attorney general, except that this information may be disclosed to the state auditor’s office, law enforcement agencies, and other entities as permitted by other law.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

Id. § 531.1021(g), (h). You assert the submitted information is confidential under section 531.1021(g). Section 531.1021 is located in subchapter C of chapter 531 of the Government Code, titled “Medicaid and Other Health and Human Services Fraud, Abuse, or Overcharges.” The legislature’s amendment to section 531.1021(g) added express language stating information connected to investigations of Medicaid fraud is confidential. Section 531.102, also found in subchapter C, further specifies the OIG “is responsible for the investigation of fraud and abuse in the provision of health and human services[.]” *Id.* § 531.102(a). Thus, subchapter C addresses the responsibilities of the OIG in conducting investigations of Medicaid and other health and human services fraud and abuse. Therefore, section 531.1021 applies only to audits and investigations of Medicaid and other health and human services fraud and abuse. The information at issue relates to an internal personnel investigation into the alleged misconduct of an employee of the Texas Department of Family and Protective Services. We find this information is not related to Medicaid or other health and human services fraud, abuse, or overcharges. Therefore, the commission may not withhold any of the information at issue under section 552.101 of the Government Code on

that basis. As no further exceptions to disclosure are raised, the submitted information must be released.²

Finally, you ask this office to issue a previous determination permitting the commission to withhold OIG investigatory records under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code, without seeking a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

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²We note the information being released contains the requestor's personal information, which the commission might be required to withhold from the general public under section 552.117(a)(1) of the Government Code. However, in this instance, the requestor has a right of access to her own information. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See* Gov't Code § 552.024(c). Thus, if the commission receives another request for this same information from a different requestor, section 552.024(c) authorizes the commission to withhold the requestor's personal information if she has timely chosen to restrict public access to the information.

Ref: ID# 492315

Enc. Submitted documents

c: Requestor
(w/o enclosures)